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PATENT

Attorney Docket: 1695CIPCON (203-1544CIP CONIII)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Dominick L. Mastri et al.

Examiner: Scott A. Smith

Serial No.: 09/625,886

Group: 3721

Filed: July 26, 2000

Dated: November 19, 2003

For: **SURGICAL STAPLER**

Mail Stop: Petition

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

PETITION TO REVIVE APPLICATION UNDER 37 C.F.R. §1.137(b)

Sir:

The above-identified application ("subject application") was indicated in the Notice of Abandonment, mailed February 25, 2002, to have gone abandoned due to "Applicant's failure to timely file a proper reply to the Office letter mailed on 09 August 2001." Applicants contend that the Notice of Abandonment was mailed in error and hereby petition to revive the subject application under 37 C.F.R. §1.137(b).

FACTS SUPPORTING PETITION

On August 9, 2001, an Election/Restriction Requirement was mailed in the subject application to the Legal Department of U.S. Surgical Corporation ("USSC"). The

CERTIFICATE OF MAILING UNDER 37 C.F.R. §1.8(a)

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail, postpaid in an envelope, addressed to the: Mail Stop: Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on November 19, 2003.

Dated: November 19, 2003


Christopher G. Trainor

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OFFICE OF PETITIONS

Election/Restriction was received in the Legal Department of USSC on August 14, 2001 and promptly forwarded to Carter, DeLuca, Farrell & Schmidt (“CDFS”), outside counsel for USSC. A response to the Election/Restriction was prepared by Christopher Trainor, Esq., an associate at CDFS, and filed with the U.S. Patent and Trademark Office on September 10, 2001. A return postcard acknowledging receipt of the response to the Election/Restriction by the U.S.P.T.O. on September 13, 2001 was returned to CDFS.

On February 25, 2002, a Notice of Abandonment was mailed in the subject application indicating that the subject application was abandoned due to “Applicants failure to timely file a proper reply to the Office letter mailed on 09 August 2001.” Subsequently, the Notice of Abandonment was forwarded to CDFS by facsimile. Through a docketing error at CDFS, the above-identified application was filed and went unnoticed until a copy of the Notice of Abandonment was discovered by the legal staff at USSC and forwarded again to CDFS in October of 2003. Thereafter, CDFS diligently prepared this Petition.

In light of the facts set forth above, Applicants hereby petition for revival of the subject application under 37 C.F.R. §1.137(b). Accompanying this petition are:

- i) a copy of the Response To Restriction Requirement filed September 10, 2001;
- ii) a copy of the postcard acknowledging receipt of the Response To Restriction Requirement on September 13, 2001; and
- iii) the petition fee as set forth in C.F.R. §1.117(m).

The entire delay in filing this petition, including the resubmission of the Response To Restriction Requirement, from the due date of the response to the filing date of this petition was unintentional.

The petition fee under 37 C.F.R. §1.17(m) of \$1,330.00 is attached by check to this petition. Please charge any deficiency as well as other fee(s) which may become due under 37 C.F.R. §§1.16 and/or 1.17, at any time during the pendency of this application, or credit any overpayment of such fee(s), to Deposit Account No. 50-2140. TWO COPIES OF THIS SHEET ARE ENCLOSED.

Respectfully submitted,

Christopher G. Trainor

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Attorney for Applicants

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PATENT
Attorney Docket No. 203-1544 CIP CON III (1695 CIP CON)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT(s): Dominick L. Mastri et al. EXAMINER: S. Smith
SERIAL NO: 09/625,886 GROUP: 3721
FILED: July 26, 2000 DATE: September 10, 2001
FOR: SURGICAL STAPLER DOCKET: 203-1544 CIP CON III
(1695 CIP CON)

Assistant Commissioner for Patents
Washington, D.C. 20231

RESPONSE TO RESTRICTION REQUIREMENT

Dear Sir:

In response to the Restriction Requirement mailed August 9, 2001, applicants hereby elect the disposable loading unit recited in Claims 25-31. The stapling kit recited in Claims 20-24 and the method recited in Claim 32 will be prosecuted in a subsequently filed divisional application. A preliminary amendment formalizing this amendment will be filed shortly.

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OFFICE OF PETITIONS

DILWORTH & BARRESE
333 Earle Ovington Boulevard
Uniondale, New York 11553

Respectfully submitted,

Christopher G. Trainor

Christopher G. Trainor
Registration No. 39,517
Attorney for Applicant(s)

CERTIFICATE OF MAILING UNDER 37 C.F.R. 1.8(a)

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail, postpaid in an envelope, addressed to the: Assistant Commissioner for Patents, Washington, D.C. 20231 on September 10, 2001.

Dated: September 10, 2001

Christopher G. Trainor
Christopher G. Trainor

PATENT OFFICE DATE STAMP WILL ACKNOWLEDGE RECEIPT OF:

1. Response to Election/Restriction Requirement
2. Certificate of Mailing
3. Return Postcard Receipt

Applicant(s): Dominick L. Mastri, et al.
Serial No.: 09/625,886
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